

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CLARENCE OTWORTH,

Plaintiff,

vs.

WILLIAMS, HUGHES & COOK, PLLC,
a corporation, and HAROLD F. CLOSZ, III,
SHON A. COOK, SUSAN M. FRANKLIN,
Individuals,

Defendants.

File No. 1:11-cv-206

Hon. Gordon J. Quist
United States District Judge

Clarence M. Otworth, *In Propria Persona*
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**DEFENDANTS' MOTION TO STRIKE PLAINTIFF CLARENCE OTWORTH'S
APRIL 8, 2008 "RESPONSE TO DEFENDANTS' MEMORANDUM IN OPPOSITION"**

NOW COME ALL DEFENDANTS, pursuant to Local Civil Rule 7.3(c) (for nondispositive motions, "[r]epley briefs may not be filed without leave of court"), as well as the Court's inherent power, see, e.g., Order Granting Motion to Strike, 2010 WL 2231907, at *2, (E.D. Mi. June 3, 2010), *in Saginaw Chippewa Indian Tribe of Mi. v. Granholm*, No. 05-10296-BC (E.D. Mi. *filed* Nov. 21, 2005), and respectfully move for an Order striking the entire contents of the document signed by Plaintiff Clarence Otworth, on April 8, 2011, titled

“Plaintiff’s Response to Defendants Memorandum in Opposition to Plaintiff’s Motion to Set Aside [Attorney Appearances],” except the first sentence. See Doc. Ent. 18.

Respectfully submitted,

Dated: April 12, 2011

/s/ Eric C. Grimm
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO STRIKE PLAINTIFF CLARENCE OTWORTH'S
APRIL 8, 2008 "RESPONSE TO DEFENDANTS' MEMORANDUM IN OPPOSITION"**

NOW COME ALL DEFENDANTS, pursuant to Local Civil Rule 7.3(c), as well as the Court's inherent power, and respectfully move for an Order striking the entire contents of the document (Doc. Ent. 18), signed by Plaintiff Clarence Otworth, on April 8, 2011, titled "Plaintiff's Response to Defendants Memorandum in Opposition to Plaintiff's Motion to Set Aside [Attorney Appearances]," except the first sentence.

We contacted Plaintiff Otworth by telephone, on April 11, 2011, and informed him of Defendants' intention to file a motion to strike. Otworth did not agree with the requested relief, and invited us to proceed with filing the instant motion.

First of all, we respectfully note that Mr. Otworth says he wishes, voluntarily, to withdraw Docket Entry 14, Otworth's "Motion to Set Aside the Attorney Appearance of Theodore N. Williams, Jr., and Eric C. Grimm." In Doc. Ent. 18, on page 1, Otworth says that "he withdraws his motion to set aside the attorney appearance[s]."

Of course, Mr. Otworth's "withdrawal" only comes after the Defendants have been put to all the trouble and expense of responding to Otworth's March 22, 2011 motion (Doc. Ent. 14). See Doc. Ent. 15 (opposition memorandum). However, without waiving the right of Defendants to seek and recover sanctions against Otworth, Defendants do not oppose Otworth's belated, but voluntary, withdrawal of his March 22, motion.

Trouble is, Otworth did not confine his April 8 court submission (Doc. Ent. 18), merely to a Notice of Withdrawal. Instead, Otworth has included six pages of material that largely appears redundant of his prior court filings. See generally FED. R. CIV. P. 12(f) (allowing the striking of "redundant" material from pleadings). Otworth's six pages of material also appears to run afoul of other legitimate concerns. See id. (also allowing the striking of "impertinent," and "scandalous matter" from pleadings). Certainly, if Otworth is withdrawing Doc. Ent. 14, then all six pages of extraneous material is necessarily "impertinent" to any issue at hand.

Otworth's March 22, 2011 motion (Doc. Ent. 14), is not a dispositive motion. Thus, Local Civil Rule 7.3(c), would appear to apply. And this rule prohibits the filing of reply memoranda without obtaining leave of court. Id. Local Rule 7.3(c), alone, provides sufficient

basis to strike Otworth's April 8, document (Doc. Ent. 18) (which purports to be a reply memorandum in support of the prior motion that he announces his intention to withdraw). Id.

But we reasonably believe that the Court additionally has inherent power, similar to Rule 12(f) (which expressly applies to "pleadings" and not to memoranda in support of motions), that enables the Court to strike certain docketed items, or parts of them. See Order Granting Motion to Strike, 2010 WL 2231907, at *2, (E.D. Mi. June 3, 2010), *in* Saginaw Chippewa Indian Tribe of Mi. v. Granholm, No. 05-10296-BC (E.D. Mi. *filed* Nov. 21, 2005). In the Saginaw Chippewa case, the Eastern District of Michigan relied on its inherent power, to grant a motion to strike, because the document in question was a response to a Rule 56 motion, and thus not technically a "pleading." We suggest that a similar analysis applies here – so, while rule 12(f) does not strictly apply, according to its own language, the Court's inherent power allows the Court to strike Otworth's April 8, document, in a similar matter to striking all or part of a pleading, under Rule 12(f).

Defendants respectfully suggest that the Court has the power to strike the document in question (Doc. Ent. 18), and that it would be reasonable, prudent, and appropriate, for the Court under the circumstances, to exercise said power, and to strike all but the first sentence.

CONCLUSION

For the reasons set forth above, all Defendants respectfully pray that the entire contents of Otworth's April 8, 2011, document (Doc. Ent. 18), be stricken, except for the first sentence. Based on the first sentence, the Court should enter an Order accepting the voluntary withdrawal of Doc. Ent. 14. Defendants also respectfully pray for such other and further relief, as may be just and proper.

Respectfully submitted,

Dated: April 12, 2011

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COUNSEL FOR DEFENDANTS.

CERTIFICATE OF SERVICE

I certify that the foregoing Defendants' Motion and Supporting Memorandum to Strike, was filed through the Court's ECF system, on April 12, 2011. Because the following party is not participating in the ECF system, the Defendants' Motion and Supporting Memorandum to Strike, is being served on him, by First Class Mail, postage prepaid, on April 12, 2011:

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Respectfully submitted,

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